IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 365 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

MAHESHBHAI MAGANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 365 of 2002
THROUGH JAIL for Petitioner No. 1
MR HH PATEL Ld. APP for Respondent No. 1
..... for Respondent No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/06/2002

ORAL JUDGEMENT

This special criminal application has been moved by the applicant-prisoner for appropriate writ, order or direction in reference to the order passed by the District Magistrate, Vadodara on 30.3.2002 refusing his

prayer to grant parole for a period of 21 days on account of death of his mother on 30.11.2001.

Rule. Learned APP Mr. HH Patel waives service of rule on behalf of State. On 20.6.2002, following order was passed.

"Notice returnable on 27.6.2002. Mr. HH Patel waives service of notice on behalf of respondents. The responsible officer of the Gazetted Cadre from the office of District Magistrate, Vadodara is directed to remain personally present with all relevant papers and the details wherein the District Magistrate Vadodara has granted to the prisoners on account of deathof father or mother of the prisoners inthe last one year. Copy of this order be given to Ld. APP."

Responsible person from the office of the District Magistrate, Vadodara is present.

Having considered the facts and circumstances of the case, and the relevant papers tendered before the Court for perusal by Ld. APP Mr.Patel this court is of the view that the order passed by the ld. District Magistrate is an order without application of mind and he has not exercised the discretionary powers objectively in the present case.

The prisoner is undergoing imprisonment for 5 years for the offence punishable under sec. 304 Part-II of IPC. He had already under gone the imprisonment for a period of more than 1 and 1/2 years when he applied for parole. It is not a matter of dispute that the mother of the prisoner has expired on 30.11.2001 and on receipt of the information of this unfortunate event in his family on 1.2.2002, he has applied for parole. He prayed for parole leave with a view to perform religious rites. Of course, his younger brother is there who can perform similar rites but the fact remains that the petitioner is a elder one. In fact, as per Hindu myth in unavoidable circumstanes only, younger brother is compelled to perform this religious rites. An application for parole leave made before the District Magistrate Vadodara was decided after a long period. Ld. Magistrate has said that by now the rites must have been performed. This reason for rejecting the parole leave application is based on only surmises. Ld. District Magistrate has not exlained that why such an important application could not be disposed of within a reasonable time.

Copy of the Schedule-B annexed to the application for parole preferred by the prisoner tendered by the Deputy Superintendent, Central Jail, Vadodara does not bear any adverse remarks. On the contrary, it is suggested that he may be granted parole leave if he is ready to furnish cash surety of Rs. 500/ only. It is also mentioned that no jail punishment has been inflicted on him and his behaviour in jail is found good. Such a prisoner has not been granted parole leave even on the unfortunate event of death of his mother. In this case, not only the District Magistrate, but even the D.S.P. has acted rashly and without sensitivity. I have seen part-II of schedule-B. This part is kept with the application. All the five relevant columns concerning opinion are left blanks by DSP and one word opinion has been expressed without assigning ay reason though it was obligatory on his part to assign areason. The word in vernacular gujarati "Abhipray" is also not fully written and abbreviated form of this word has been used. The Ld. District Magistrate though has written in the order that he has considered the opinion of police but the hard reality is that none of these two officers have applied their mind. There was no opinion available for applicationof mind. Both these officers if individually are of the view that their subordinate has put the papers without proper note and their signatures have been obtained mechanically than in that case these officers shall have to institute departmental proceedings against such subordinate staff members who had placed respective file before them or otherwise it can be legitimately inferred that they have not cared to apply mind at all. If the authorities of the view that for religious rites parole leave for 21 ays is not required and grant of leave for some lesser period would serve the purpose, in that eventuality they can grant leave for a week or so. For short, the court is satisfied that the order rejecting the parole leave application by the District Magistrate, Vadodara is found bad and, therefore, appropriate direction to the concerned authority shall have to be issued.

It is unfortunate that the District Magistrate has taken more than reasonable period dealing with such an application connected with the sentiments/emotions of a prisoner. Before parting with the order, it would be appropriate to observe that Jail Authority and other State machinery should decide perole applications in a reasonable period of time say within amonth. When such leave application has been prayed on account of death of father or mother, it should be decided on merits within a

week or ten days. State may issue appropriate directions to all the D.S.Ps., Police Commissioner and District Magistrates in this regard. Copy of this order be sent to the Secretary, Home Department, Sachivalaya, Gandhinagar.

This petition is allowed. The District Magistrate, Vadodara is hereby directed to grant parole leave of clear 8 days from the date of his release on furnishing surety to the satisfactin of the Jail Authority reflected in Schedule-B. However, it is clarified that the prisoner shall be released for this period on parole only if his wife Pushpaben takes the prisoner from the Jail as undertakne by the prisoner in the application.

(C.K. BUCH, J.)
mandora/